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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 STAN R. WAFF,

11 Plaintiff,

12 v.

13 ESMERELDA COUNTY, NEVADA, *et*
14 *al.*,

15 Defendants.

Case No. 2:10-CV-00088-KJD-RJJ

ORDER

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17 This matter is before the Court on referral from the United States Court of Appeals for the
18 Ninth Circuit for the limited purpose of determining whether in forma pauperis status should
19 continue for this appeal or whether the appeal is frivolous or taken in bad faith.

20 This case initially came to the Court on Plaintiff's Civil Rights Complaint pursuant to 42
21 U.S.C. § 1983. Construing Plaintiff's pro se pleadings liberally, it appears that his complaint alleged
22 that he was denied effective assistance of counsel. A public defender does not act under color of
23 state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal
24 proceeding. See Polk County v. Dodson, 102 S. Ct. 445, 453 (1981). Further, Plaintiff's amended
25 complaint contained no factual allegations against several defendants, including Nye County.
26 Plaintiff's allegations, even construed as liberally as possible, failed to state a claim under § 1983.

1 Accordingly, Plaintiff should not be permitted to proceed *in forma pauperis* where, as here,
2 the appeal is frivolous and not taken in good faith. 28 U.S.C. §1915(a)(3).

3 Accordingly, Plaintiff's forma pauperis status is revoked.

4 DATED this 20th day of June 2011.

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8 Kent J. Dawson
United States District Judge
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